

## Message Text

CONFIDENTIAL

PAGE 01 USBERL 02123 191750Z

47

ACTION L-02

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-03 H-01

INR-05 NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15

USIA-06 OMB-01 /056 W

----- 030497

R 191539Z NOV 74

FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 143

C O N F I D E N T I A L USBERLIN 2123

E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: CONVENTION ON CIVIL AND POLITICAL RIGHTS--

BK/L ON ARTICLE 41 DECLARATION

REFS:

A. STATE 235286; B) STATE 252292

C) BONN 17842; D) USBERLIN 1882

1. WE SHARE DEPARTMENT'S PUZZLEMENT (REFS A AND B)  
AT REASONS ADVANCED BY BRITISH AND FRENCH (REF C) FOR  
INCLUDING LANGUAGE IN BK/L ON REQUIREMENT FOR SENAT TO  
HAVE FRG ADVISE OTHER STATES "AS APPROPRIATE" OF  
ALLIED RESERVATIONS RESPECTING INCLUSION OF BERLIN IN  
FRG DECLARATION ON ACCEPTANCE OF ARTICLE 41 COMPLAINT  
MECHANISM. THERE IS NO GENERAL RULE FOR SUCH LANGUAGE  
TO BE USED IN BK/L'S IN WHICH ALLIES EXPRESS RESERVA-  
TION ON FRG TREATY, AND THERE IS NO PRINCIPLE AT STAKE  
WITH RESPECT TO ALLIED KOMMANDATURA CONTROL OF SENAT.  
DEPARTMENT'S RECORDS ARE ACCURATE. BK/L (73) 48 IS ONLY  
PRECEDENT FOR THIS LANGUAGE. THERE ARE, HOWEVER, IN  
OUR VIEW, ADVANTAGES FOR EMPLOYING SOMEWHAT SIMILAR  
LANGUAGE BOTH IN BK/L (73)48 AND IN PRESENT DRAFT BK/L  
WHICH IS ITS FOLLOW-ON.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 02123 191750Z

2. AK LEGAL COMMITTEE ADDRESSED THIS POINT IN ITS  
MEMORANDUM OF JULY 25, 1973 CONCERNING FRG ADHERENCE  
TO COVENANT AS FOLLOWS:

"LASTLY, THE LEGAL COMMITTEE WISHES TO DRAW  
ATTENTION TO THE FOLLOWING ADDITIONAL POINT: THERE  
MIGHT BE A DIFFICULTY RELATING TO THE COMMUNICATION  
BY THE FRG OF THE CONTENTS OF ANY BK/L THE AK  
DECIDED TO ISSUE TO THE OTHER PARTIES TO THE CONVENTIONS,  
A DIFFICULTY EXPERIENCED, IT WILL BE RECALLED, IN THE  
EXTENSION OF THE CIM/CIV CONVENTIONS TO BERLIN. IT  
IS SUGGESTED THAT ONE WAY OF DEALING WITH THIS WOULD  
BE FOR THE AK TO REQUIRE THE FRG, AS A CONDITION FOR  
PERMITTING THE EXTENSION, TO NOTIFY THE OTHER PARTIES  
TO THE COVENANTS OF THE ALLIED RESERVATIONS, IN  
PARTICULAR TO THAT RELATING TO THE ALLIED COMPETENCE  
TO DETERMINE WHETHER A DEPOSIT UNDER PART IV OF THE  
COVENANT ON CIVIL AND POLITICAL RIGHTS SHOULD BE MADE  
IN RELATION TO BERLIN (ARTICLE 41).

3. CIM/CIV EXPERIENCE WAS, OF COURSE, FRESH IN EVERY-  
ONE'S MIND AT TIME COVENANT WAS FIRST CONSIDERED. SINCE  
IT WAS FELT THERE WAS REAL CHANCE THAT ALLIED  
RESERVATION COULD BECOME RELEVANT TO COMPLAINT RAISED  
AGAINST FRG IN CONNECTION WITH BERLIN MATTER UNDER  
COVENANT, AK DECIDED THAT IT WAS APPROPRIATE TO MAKE  
EXPLICIT REQUIREMENT THAT INCLUSION OF BERLIN WAS  
CONDITIONED UPON FRG UNDERTAKING TO INFORM OTHER PARTIES  
OF THOSE RESERVATIONS AND THUS OBLIGE POSSIBLE EMBAR-  
RASSMENT AT LATER DATE. HAPPILY NO FURTHER PROBLEMS  
HAVE ARisen WITH RESPECT TO FRG RELUCTANCE TO INFORM  
ITS TREATY PARTNERS OF ALLIED RESERVATIONS. IT WILL  
BE RECALLED THAT WHILE ALLIES DO TAKE POSITION THAT  
FRG HAS OBLIGATION TO INFORM ITS TREATY PARTNERS OF  
ALLIED RESERVATIONS, THIS OBLIGATION IS ONLY IMPLICIT  
IN BKC/L52)6. AS POINT OF FACT, WE ARE DOUBTFUL  
THAT FRG DOES ADVISE ALL TREATY PARTNERS OF MANY ROUTINE  
ALLIED RESERVATIONS, FOR EXAMPLE, PLETHORA OF ROUTINE  
RESERVATIONS MADE TO BILATERAL AGREEMENTS ON SUCH  
MATTERS AS SCIENTIFIC RESEARCH. THIS IS HARDLY, IF  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 02123 191750Z

EVER, PRACTICAL PROBLEM, AND WE SEE NO NEED TO ENGAGE  
FRG IN DISCUSSION ON IT. WHERE SPECIFIC PROBLEM CAN  
BE FORESEEN, HOWEVER, HOWEVER, IT MAY FROM TIME TO TIME BE  
USEFUL TO CALL SENAT'S ATTENTION SPECIALLY TO DESIR-  
ABILITY OF ENSURING THAT FRG FULFILLS OBLIGATION, BUT  
THIS WOULD SEEM BEST LEFT TO CASE BY CASE AK DECISION.

4. WORDS " AS APPROPRIATE" WERE INCLUDED IN BK/L 73)48

IN ORDER TO INDICATE THAT WE WISHED TO LEAVE IT TO FRG DISCRETION TO DETERMINE BEST METHOD OF INFORMING OTHER PARTIES OF ALLIED POSITION. THEY HAVE ADDITIONAL MEANING IN DRAFT BK/L ON ARTICLE 41 QUESTION. WE EXPECTED THAT IF FRG DECLARATION ON ACCEPTANCES OF ARTICLE 41 MECHANISM REFERRED TO BERLIN EXPLICITY AND WAS CIRCULATED TO ALL PARTIES TO COVENANT IT WOULD ALMOST CERTAINLY PROVOKE SOVIET PROTEST THAT WOULD LEAD TO ANOTHER ROUND SIMILAR TO THAT RECENTLY COMPLETED WITH RESPECT TO COVENANT ITSELF. OUR DETERMINATION WAS THAT BERLIN NEED NOT BE MENTIONED EXPLICITY IN FRG DECLARATION SINCE THAT DECLARATION WAS NOT SEPARATE INTERNATIONAL AGREEMENT REQUIRING SPECIAL MENTION OF BERLIN PURSUANT TO BKC/L 52)6. WE ALSO CONSIDERED THAT IT WOULD BE SUFFICIENT FOR FRG TO CALL ATTENTION TO ALLIES' BERLIN RESERVATIONS ONLY OTHER STATES MAKING DECLARATION ON ARTICLE 41. SINCE SOVIETS AND EAST EUROPEANS IN GENERAL CAN BE EXPECTED TO ABSTAIN FROM SUCH DECLARATIONS IN VIEW OF THEIR LONG-STANDING OPPOSITION TO OPTIONAL PARTS OF HUMAN RIGHTS TREATIES THAT PROVIDE OPPORTUNITIES FOR INTERNATIONAL REVIEW OF DOMESTIC SITUATION, FRG WOULD NOT HAVE TO CALL SOVIET ATTENTION DIRECTLY TO BERLIN'S INCLUSION IN ARTICLE 41 DECLARATION, AND LIKELIHOOD OF ANOTHER EXCHANGE OF NOTES WOULD BE REDUCED ACCORDINGLY.

5. WE NOTE THAT BONN GROUP SLIGHTLY REVISED LANGUAGE OF SECOND PARAGRAPH SO THAT FRG WOULD BE EXPECTED TO ADVISE "AS APPROPRIATE" ALL PARTIES TO ORIGINAL COVENANT. THIS REVISION STRIKES US AS PREFERABLE TO ORIGINAL BERLIN LANGUAGE (REF D) WHERE "AS APPROPRIATE" CAME AFTER "SENAT WILL," PROVIDED THAT FRG UNDERSTANDS CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USBERL 02123 191750Z

IT TO MEAN THAT IT IS REQUIRED TO INFORM ONLY THOSE PARTIES TO COVENANT WHO MAKE ARTICLE 41 DECLARATIONS. IF FRG HAS OTHER UNDERSTANDING, WE BELIEVE IT WOULD BE PREFERABLE TO RETURN TO MORE LIMITED ORIGINAL BERLIN LANGUAGE WITH SINGLE MODIFICATION THAT "AS APPROPRIATE" SHOULD COME AFTER "DECLARATIONS." SELIGMANN

CONFIDENTIAL

NNN



## Message Attributes

**Automatic Decaptoning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** HUMAN RIGHTS, AGREEMENT DRAFT, NEGOTIATIONS, POLITICAL FREEDOM  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 19 NOV 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** CollinP0  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1974USBERL02123  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D740334-0740  
**From:** USBERLIN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1974/newtext/t19741129/aaaaaynl.tel  
**Line Count:** 160  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION L  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:**  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** CollinP0  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 14 MAY 2002  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <14 MAY 2002 by boyleja>; APPROVED <20 MAR 2003 by CollinP0>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** CONVENTION ON CIVIL AND POLITICAL RIGHTS-- BK/L ON ARTICLE 41 DECLARATION  
**TAGS:** PGOV, SHUM, WB, GE  
**To:** BONN  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005